IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPLICATION NO.25 OF 2001

The Commissioner of Central
Excise, Pune - 1, ICE House,
41-A, Sassoon Road,
Opp. Wadia College,
Pune - 411 001. .. Applicant.

V/s.

M/s.Tetra Pak Converting
(I) Limited. Taluka Maval,
District Pune .. Respondent.

Mr.Y.R. Mishra for the applicant.

Mr.M.H. Patil for the respondent.

CORAM : DR.S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.

DATED : 18TH JANUARY, 2007.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

1. This application was admitted on 6th April, 2005 on the following substantial question of law :-

> Whether the inputs PPP, PEP, Pull Tab strips are inputs for the assessee for availing modvat credit in relation to the manufacture of finished product ?

2. The applicant is a manufacturer of aseptic packaging made by aluminium plastic with paper and aluminium. The packing manufactured by the applicant along with the imported strips of polyprolylene or polyethylene are sold on order to the customer. The packaging manufactured by the applicant is in the form of rolls containing details

such as, the brand name of the product, logo of the ultimate manufacturer etc. The packaging which is a tetra pack is filled with liquid such as fruit juice, milk etc. and then sealed by inserting the strips of polyprolylene or polyethylene and heating it.

3. The applicant had availed modvat credit on the duty paid on strips of polypropylene or polyethylene. According to the revenue, the strips of either polypropylene or polyethylene supplied by the applicant were not used in the manufacture of aseptic packaging and since strips of polyprolylene and polyethylene were supplied separately, the applicants were not eligible to avail the modvat credit.

4. The Tribunal held that the aseptic packaging rolls supplied by the applicants can not be made into a container without the use of the strips of polypropylene or polyethylene. In other words, the Tribunal held that the aseptic packaging manufactured by the applicant would become marketable only after sealing the container. The Tribunal relied upon the decision of the Apex Court in the case of Commissioner of Central Excise V/s. JAY Engineering Works Limited [1989 (39) ELT 169] and the decision of the Tribunal in the case of

Healwell Pharmaceuticals V/s. Collector of Central Excise reported in [1994 (72) ELT 446] and held that the polypropylene or polyethylene, pull tab strips were the inputs used in or in relation to the manufacture of the finished product as contemplated under Rule 57A(4) of the Central Excise Rules, 1944.

5. Thus, the findings recorded by the Tribunal being the finding of fact, this is not a fit case for calling a statement of the case from the Tribunal.

6. Accordingly, the application filed by the revenue is rejected, with no order as to costs.

(DR.S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)